IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DISTRICT

TETYANA NAZARUK,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 2:06-cv-00242
	)	
EBAY, INC. and ACE COINS,	)	The Honorable Dale A. Kimball
	)	
Defendants.	)	

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Plaintiff, Tetyana Nazaruk, has initiated this action as a Civil Rights claim brought pursuant to 42 U.S.C. §1983 & §1985. A necessary predicate for proceeding under §1983 is that the defendant or defendants acted under "color of state law." That section provides redress to individuals who have suffered violation of rights "secured by the Constitution and laws of the United States" where the violations are committed under color of state law. *Yanaki v. Iomed, Inc*., 415 F 3d 1204, 1207 (10th Circ. 2005).

Even if all of the factual allegations in plaintiff's Complaint are accepted as being true, the Complaint fails to allege facts sufficient to find that Ace Coins is a private actor where neither Ace Coins nor the co-defendant eBay are employees of any State or the federal government. The Complaint does not allege these facts, and they are not true, in any event. It is not alleged that Ace Coins acted under any right or rule of conduct imposed by the State or that the State was in any way responsible for Ace Coins' conduct. The Complaint, on its face does not contain allegations which would place this matter within the ambit of §1983.

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The §1985 claim is likewise defective in that §1985 pertains to private conspiracies aimed at interfering with rights that are protected against private and official encroachment. *Tilton v. Richardson,* 6 F 3d. 683, 686 (10th Circ. 1993). There are only two recognized protected rights under §1985: the right to be free from involuntary servitude and the right to interstate travel. The complaint does allege that either of these rights has been infringed, and it is clear that they could not be.

This action simply fails as a civil rights claim. There is no implication that either defendant acted under color of state law or that the right to be free from involuntary servitude and to travel in interstate commerce have been effected.

Ace Coins also raises the issue of insufficiency of service of process in that the summons and complaint in this matter were sent by certified mail to Ace Coins at its address in Moline. This method of service does not comport with the mandate of Rule 4(e)(1) & (2). Ace Coins was not served by any method therein, nor does Illinois law provide for the service of process by certified mail. See 735 ILCS §2-5/203-206(2004).

CONCLUSION

Defendant, Ace Coins, respectfully prays that this action be dismissed with prejudice for the reasons stated in both defendants' motions and memoranda.

Ace Coins, Defendant

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on JULY 28, 2006.

BY: CM/ECF